

ATTACHMENT E
TERMS AND CONDITIONS
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TERMS AND CONDITIONS

1. Vehicle Buy-Down Incentive Program Agreement

The Vehicle Buy-Down Incentive Program (Program) is being funded by the California Energy Commission (Energy Commission) through the Alternative and Renewable Fuel and Vehicle Technology Program.

The vehicle buy-down incentive Agreement (Agreement) is comprised of the incentive payment, the Applicant's Buy-Down Incentive Reservation Form, these Terms and Conditions, all physical attachments, and all documents incorporated expressly by reference. The Energy Commission may impose additional special conditions that address the unique circumstances of the Vehicle Buy-Down Incentive Reservation (Application). Special conditions that conflict with these standard provisions take precedence.

The Applicant's authorized representative shall sign all copies of the Incentive Reservation Form and return all signed packages to the Energy Commission's Grants and Loans Office. Failure to meet this requirement may result in the forfeiture of the reservation. When all required signatures are obtained, a Buy-Down Incentive Reservation Confirmation Form will be returned to the Applicant.

2. Term of the Agreement

The Effective Date of this Agreement is when the Energy Commission approves the Agreement at an Energy Commission Business Meeting. This Agreement terminates 120 days following the effective date or when all incentive payments are disbursed, whichever is sooner, unless otherwise indicated in writing by the Commission Incentive Manager.

3. Attachments and References

The following are attached and hereby expressly incorporated into this Agreement.

- Energy Commission's solicitation PON-10-604
- Payee Data Record Form (STD. 204)
- Buy-Down Incentive Reservation Confirmation Form
- Buy-Down Incentive Payment Claim Form
- Resolution of the California Energy Commission (if applicable)
- Special Conditions (if applicable)

4. Funding Limitations

Any federal, State, and local laws and regulations applicable to the Program not expressly listed in this Agreement are incorporated herein as part of this Agreement.

5. Due Diligence

The Applicant is required to take timely actions which, taken collectively, complete the reservation and payment process. The Commission Incentive Manager will periodically evaluate the status of each reservation. If the Commission Incentive Manager determines the Applicant is not being diligent in (1) selling eligible vehicles within the 120-day period, or (2) completing and submitting the monthly report and Buy-Down Incentive Reservation Payment Claim Form with appropriate documentation for each vehicle sold, the Commission Incentive Manager may recommend to the Policy Committee of the Commission (Committee) that the reservation be terminated, and the Committee may, without prejudice to any of its remedies, terminate the Agreement.

6. Reports

a. Progress Reports

The Applicant shall submit monthly progress reports to the Commission Incentive Manager as required in the PON. At a minimum, each monthly progress report shall include the following:

Cumulative information:

- Number of eligible vehicles sold.
- Number of eligible vehicles on order.
- Number of eligible vehicles delivered.
- Number of expected sales in the following month.

Number of copies: The Applicant shall submit one original and one electronic copy of the monthly progress reports.

Additional Information: Additional information may be required in the progress reports as specified in the Special Conditions.

b. Rights in Reports

The Energy Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Energy Commission.

c. Failure to Comply with Reporting Requirements

Failure to comply with the monthly reporting requirements will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in suspension or termination of the Agreement, and withholding of future incentives under this PON. A willful failure to perform, a history of

failure to perform, or unsatisfactory performance of this Agreement and/or other financial assistance awards, may also result in a debarment action to preclude future incentives and awards.

7. Publications - Legal Statement on Reports and Products

You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such products or reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

8. Changes to the Agreement

a. Significant Changes to the Agreement

Significant changes to the Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- Change of Applicant's legal name,
- Change of Applicant,
- Changes to the Reservation amount that increases the amount reserved,
- Changes to extend the term of the Agreement.

The Recipient shall submit a request in writing to the Energy Commission Incentive Manager with a copy to the Energy Commission Grants and Loans Officer for any significant change. The Incentive Manager will notify the Applicant of the appropriate Energy Commission action within ten (10) working days.

b. Nonsignificant Changes

Changes that are not significant to the Agreement do not need to be approved at an Energy Commission business meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

9. Termination

This Agreement terminates at the end of the 120-day term of the Agreement or when all incentive payments have been disbursed, whichever is sooner. This Agreement may also be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the Applicant of the conditions set forth in the PON or these Terms and Conditions, the Committee may, without prejudice to any of its legal remedies, terminate an Application for cause upon five (5) days written notice to the Applicant.

b. Without Cause

The Committee may, at its option, terminate a reservation without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Applicant by certified mail, return receipt requested. In such event, the Applicant agrees to use all reasonable efforts to mitigate the Applicant's expenses and obligations hereunder.

10. Costs

The Applicant acknowledges that the reservation requires the Applicant to perform tasks and reporting that it would perform in the ordinary course of business and that this Agreement does not increase the administrative expenses or costs of the Applicant. The Applicant therefore will not be reimbursed for administrative expenses associated with performing under this Agreement.

11. Stop Work

The Commission Incentive Manager may, at any time, by written notice to Applicant, require Applicant to stop all or any part of the work under this Agreement. Upon receipt of such stop work order, Recipient shall immediately take all necessary steps to comply therewith and to cease offering incentives under the PON. An equitable adjustment shall be made by the Energy Commission based upon a written request by the Applicant. Such adjustment request must be made by Applicant within thirty (30) days from the date of the stop work order. Applicant shall resume the work only upon receipt of written notice from the Commission Incentive Manager.

12. Standard of Performance

Applicant, in performing under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Applicant's field.

13. Payment of Incentives

The Energy Commission agrees to reimburse the Applicant only for actual incentives issued by the Applicant based on the allowable incentive amounts specified in the PON.

a. Payment Requests

The Applicant may request payment from the Energy Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the monthly progress reports. The final payment request must be received by the Energy Commission no later than thirty (30) days after the expiration date of this Agreement.

Payments will be made only on a reimbursement basis after the Applicant has submitted and the Commission Incentive Manager has approved the documentation required under the PON.

b. Documentation

All payment requests must be submitted using a completed Buy-Down Incentive Payment Claim Form (Attachment D). This form must be accompanied by:

(1) copy of the sales documents that show the vehicle identification number; model year, make, model, engine family/test group, and ARB Executive Order number; actual purchase price; all incentives, rebates, or buy downs and all applicable state and federal taxes; purchase date; purchaser name, address, and contact information; and purchaser or purchaser representative's signature acknowledging acceptance of vehicle delivery; and

(2) copy of completed California Department of Motor Vehicles registration form that shows the vehicle identification number and that the vehicle is registered in California.

For vehicles of 14,000 lbs. gross vehicle weight or greater, the Energy Commission may authorize payment based on a Buy-Down Incentive Payment Claim Form –180 accompanied by a purchase order showing the following:

Copy of the sales documents that show as much of the vehicle identification number as is available; model year, make, model, and engine family/test group, and ARB Executive Order number; actual purchase price; all incentives, rebates, or buy downs and all applicable state and federal taxes; purchase date; purchaser name, address, and contact information; and a certification that the purchaser will register and commit to operate the vehicle for three (3) years in California.

Upon delivery of the vehicle to the Purchaser, Applicant must submit purchaser or purchaser representative's signature acknowledging acceptance of vehicle delivery and the information required in (2), above. Applicants are expected to submit the required additional information within 180 days following Applicant's submission of the Buy-Down Incentive Payment Claim Form -180.

The Energy Commission may authorize a limited extension of the 180-day period on a showing of good cause. Any request for an extension should be submitted in writing and include the number of vehicles remaining, the amount of additional time needed, and the reason for the need.

Failure to comply with the 180-day deadline or any extension granted to that deadline will result in the Applicant reimbursing the incentive amount in full to the Energy Commission within thirty (30) days of the elapsed deadline, and may result in termination of this Agreement, removal of Applicant's eligibility for the program, and a debarment action to preclude future incentives and awards.

Any payment request that is submitted without this documentation will not be authorized. If the documentation is incomplete, inadequate, or inaccurate, the Commission Incentive Manager will inform the Applicant and withhold the payment request until all required information is received or corrected. Any penalties imposed on the Applicant because of delays in payment will be paid by the Applicant.

c. State Controller's Office

Payments are made by the State Controller's Office.

14. Fiscal Accounting Requirements

a. Accounting and Financial Methods

The Applicant shall establish a separate ledger account or fund for receipt and disbursement of Energy Commission funds for each reservation and payment. Expenditure details must be maintained in accordance with appropriate accounting practices.

b. Retention of Records

The Applicant shall retain all project records (including financial records, progress reports, reservation claims, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the Agreement term, whichever is later, unless otherwise specified in the Agreement.

c. Audits

Upon written request from the Energy Commission, the Applicant shall provide detailed documentation of all finance and transaction matters at any time throughout the Program. In addition, the Applicant agrees to allow the Energy Commission or any other agency of the State or the Federal Government, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to this Agreement and for a period of three (3) years thereafter unless the Energy Commission notifies the Applicant, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Applicant agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State.

Applicants are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Applicant should provide two copies of the independent audit report and any resulting comments and correspondence to the Commission Incentive Manager within 30 days of the completion of such audits.

15. Indemnification

The Applicant agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to Applicant and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Applicant in the performance of this Agreement.

16. Disputes

In the event of a dispute or grievance between Applicant and the Energy Commission regarding this Agreement, a vehicle incentive reservation, or payment of the incentive, the following two-step procedure shall be followed by both parties. Applicant shall continue

with responsibilities under this Agreement during any dispute. The 120-day period of this Agreement is not extended during any dispute.

a. Energy Commission Dispute Resolution

The Applicant shall first discuss the problem informally with the Commission Incentive Manager. If the problem cannot be resolved at this stage, the Applicant must direct the grievance together with any evidence, in writing, to the Energy Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Applicant's position and the remedy sought. The Energy Commission Grants and Loans Officer must make a determination on the problem within ten (10) working days after receipt of the written communication from the Applicant. The Grants and Loans Officer shall respond in writing to the Applicant, indicating a decision supported by reasons. Should the Applicant disagree with the Grants and Loans Officer decision, the Applicant may appeal to the second level.

The Applicant must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Applicant's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Energy Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Applicant to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Applicant within twenty (20) working days of receipt of the Applicant's letter. The Executive Director may exercise the option of presenting the decision to the Energy Commission at a business meeting. Should the Applicant disagree with the Executive Director's decision, the Applicant may appeal to the Energy Commission at a regularly scheduled business meeting. Applicant will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

b. Mutual Agreement for Arbitration

Should the Energy Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the Applicant, either party may seek to have the dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the

aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this PON. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this Agreement or the date of the termination of the PON, whichever is earlier, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- The AAA's administrative fees shall be borne equally by the parties;
- The expense of a stenographer shall be borne by the party requesting a stenographic record;
- Witness expenses for either side shall be paid by the party producing the witness;
- Each party shall bear the cost of its own travel expenses;
- All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

If the parties do not mutually agree to binding arbitration, the sole forum to resolve the dispute is California State court.

17. Workers' Compensation Insurance

- a. Applicant hereby warrants that it carries Workers' Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Incentive Manager satisfactory evidence of this insurance at any time the Commission Incentive Manager may request.
- b. If Applicant is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Incentive Manager satisfactory evidence of this insurance at any time the Commission Incentive Manager may request.

18. General Provisions

a. Governing Law, Jurisdiction, and Venue

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Sacramento, California, and the Applicant agrees to and submits to the jurisdiction of such court.

b. Independent Capacity

The Applicant, and the agents and employees of the Applicant, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Energy Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Applicant either in whole or in part.

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Energy Commission reserves the right to seek further written assurances from the Applicant that the work performed under this Agreement will be consistent with the terms of the Agreement.

h. Change in Business

- (1) Applicant shall promptly notify the Commission Incentive Manager of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the Agreement.
- (2) Applicant shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Applicant, the Energy Commission may terminate the Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of the Agreement for any reason. The provisions include, but are not limited to:

- “Publications – Legal Statement on Reports and Products”
- “Payment of Incentives”
- “Change in Business”
- “Disputes”
- “Termination”
- “Audit”
- “Indemnification”
- “Fiscal Accounting Requirements”

19. Certifications and Compliance

a. Federal, State and Municipal Requirements

Applicant shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of the Application, Applicant shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Applicant shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Applicant shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

c. Drug-Free Workplace Certification

By signing the Buy-Down Incentive Reservation Form, the Applicant hereby certifies under penalty of perjury under the laws of the State of California that the Applicant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.

(3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:

- Will receive a copy of the company's drug-free policy statement;
- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of the reservation or termination of the reservation or both, and the Applicant may be ineligible for any future State awards if the Energy Commission determines that any of the following has occurred: (1) the Applicant has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Child Support Compliance Act (Applicable to California Employers)

For any reservation in excess of \$100,000, the Applicant acknowledges that:

- It recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

e. Americans with Disabilities Act

By signing this Incentive Reservation Form, Applicant assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

20. Budget Contingency Clause

It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Applicant or to furnish any other consideration under this Agreement, and the Applicant shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: 1) cancel this Agreement or Program with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Applicant to reflect the reduced amount.

21. Confidentiality

a. Information Considered Confidential

Confidential Information is information designated confidential pursuant to the procedures specified in 20 CCR 2505.

b. Submittal of Unanticipated Confidential Information

It is possible that the Applicant may submit additional data or information not originally anticipated as confidential. In this case, Applicant shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality.

c. Disclosure

The Energy Commission may disclose information that is not Confidential Information. Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

d. Information Practices Act

The Energy Commission acknowledges that some of the information submitted, such as an individual's name and address, may be "personal information," subject to the Information Practices Act. This information will only be maintained and used by the Energy Commission to contact individuals for program management and auditing purposes and may only be disclosed pursuant to the limitations of the Act.